

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE ENROLLED ACT No. 1434

AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-29-1.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 1.3. As used in this chapter, "letter of agency" means a written statement that a customer signs that authorizes a change to that customer's primary interexchange carrier or primary local exchange carrier.**

SECTION 2. IC 8-1-29-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 1.5. As used in this chapter, "preferred carrier change order" means a request to change a customer's telecommunications provider.**

SECTION 3. IC 8-1-29-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 2. As used in this chapter, "telecommunications" means the electronic transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received. The term does not include commercial mobile radio service (as defined in 47 U.S.C. 332).**

SECTION 4. IC 8-1-29-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 5.5. A telecommunications provider may not submit**

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a preferred carrier change order unless the order has first been confirmed in accordance with one (1) of the following procedures:

- (1) The telecommunications provider has obtained the customer's written authorization through a letter of agency.
- (2) The telecommunications provider has obtained the customer's electronic authorization:
 - (A) to submit a preferred carrier change order; and
 - (B) placed from a telephone number on which the telecommunications service is to be changed.

A call to the telecommunications provider under this subdivision must connect the customer to a voice response unit or a similar mechanism that records the required information regarding the preferred carrier change, including automatically recording the automatic number identification.

- (3) An appropriately qualified and independent third party has obtained the customer's oral authorization to submit the preferred carrier change order. Such an authorization must confirm and include appropriate verification of the customer's identity.

- (4) Any other procedure approved by the commission.

SECTION 5. IC 8-1-29-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. The commission shall adopt rules under IC 4-22-2 designed to **implement IC 8-1-29-5.5. The commission's rules shall** ensure that a customer of a telecommunications provider is not:

- (1) switched to another telecommunications provider without the customer's authorization; or
- (2) billed for additional services by a telecommunications provider that without the customer's authorization added the services to the customer's service order.

The rules adopted under this section must be consistent with rules adopted by the Federal Communications Commission concerning verification procedures for the switching of a customer's telecommunications provider.

SECTION 6. IC 8-1-29-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. A complaint may be filed with the commission by **any of the following**:

- (1) A customer of a telecommunications provider who has been:
 - (A) switched by one (1) telecommunications provider to another telecommunications provider without the customer's authorization; or
 - (B) billed for services by a telecommunications provider that



without the customer's authorization added the services to the customer's service order.

(2) A telecommunications provider that has been removed as a customer's telecommunications provider without the customer's authorization. ~~or~~

(3) The commission on its own motion.

(4) The office of the utility consumer counselor.

A hearing held on a complaint filed under this section must be consistent with IC 8-1-1-8.

SECTION 7. IC 23-7-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. As used in this chapter:

"Charitable organization" means any organization described in Section 501 of the federal Internal Revenue Code.

"Contribution" means a promise or pledge of money, a payment, or any other rendition of property or service. It does not include the payment of membership dues, fines or assessments, or payments for property sold or services rendered by the charitable organization, if not sold or rendered in connection with a solicitation, **and does not include a charitable organization that resells used clothing or household items.**

"Division" means the consumer protection division, office of the attorney general.

"Person" includes any individual, organization, trust foundation, association, partnership, limited liability company, or corporation.

"Professional fundraiser consultant" means any person who is hired for a fee to plan, manage, advise, or act as a consultant in connection with soliciting contributions for, or on behalf of, a charitable organization, but who does not actually solicit contributions as a part of the person's services or employ, procure, or engage a compensated person to solicit contributions. The term does not include a charitable organization, or a bona fide officer, employee, member, or volunteer of a charitable organization, **that solicits on its own behalf.**

"Professional solicitor" means a person who, for a financial consideration, solicits contributions for, or on behalf of, a charitable organization, either personally or through agents or employees specifically employed for that purpose. The term does not include a charitable organization, or an officer, **an** employee, **a** member, or **a** volunteer of a charitable organization, **that solicits on its own behalf.**

"Solicit" means:

(1) to request, other than as described in subdivision (2), directly or indirectly, financial assistance in any form on the representation that the financial assistance will be used for a

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charitable purpose; or

(2) to sell, offer, or attempt to sell any advertisement, advertising space, membership, or tangible item:

(A) in connection with which any appeal is made for any charitable organization or purpose;

(B) where the name of any charitable organization is used or referred to in any appeal made for any charitable organization as an inducement or reason for making a sale described in this subdivision; or

(C) when or where in connection with a sale described in this subdivision any statement is made that the whole or any part of the proceeds from the sale will be used for any charitable purpose or benefit any charitable organization.

A solicitation shall be considered to have taken place whether or not the person making the solicitation receives any contribution.

SECTION 8. IC 23-7-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) A person may not act as a professional fundraiser consultant or professional solicitor for a charitable organization unless the person has first registered with the division. A person who applies for registration shall disclose the following information while under oath:

(1) The names and addresses of all officers, employees, and agents who are actively involved in fundraising or related activities.

(2) The names and addresses of all persons who own a ten percent (10%) or more interest in the registrant.

(3) A description of any other business related to fundraising conducted by the registrant or any person who owns ten percent (10%) or more interest.

(4) The name or names under which it intends to solicit contributions.

(5) Whether the organization has ever had its registration denied, suspended, revoked, or enjoined by any court or other governmental authority.

(b) A registrant shall notify the division in writing within one hundred eighty (180) days of any change in the information contained in the registration. However, if requested by the division, the solicitor has fifteen (15) days to notify the division of any change in the information.

(c) Each registration is valid for one (1) year and may be renewed for additional one (1) year periods upon application to the division and payment of the renewal fee.

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(d) Before acting as a professional fundraiser consultant for a particular charitable organization, the consultant must enter into a written contract with the organization and file this contract with the division. The contract must identify the services that the professional fundraiser consultant is to provide, including whether the professional fundraiser consultant will at any time have custody of contributions.

(e) Before a professional solicitor engages in a solicitation, the professional solicitor must have a contract which is filed with the division. This contract must specify the percentage of gross contributions which the charitable organization will receive or the terms upon which a determination can be made as to the amount of the gross revenue from the solicitation campaign that the charitable organization will receive. The amount that the charitable organization will receive must be expressed as a fixed percentage of the gross revenue or as a reasonable estimate of the gross revenue. If a fixed percentage is used, the percentage must exclude any amount that the charitable organization is to pay as expenses of the solicitation campaign, including the cost of the merchandise or services sold. If requested by the charitable organization, the person who solicits must at the conclusion of a charitable appeal provide to the charitable organization the names and addresses of all contributors, the amount of each contribution, and a final accounting of all expenditures. Such information may not be used in violation of any trade secret laws. The contract must disclose the average percentage of gross contributions collected on behalf of charitable organizations that the charitable organizations received from the professional solicitor for the three (3) years preceding the year in which the contract is formed.

(f) Before beginning a solicitation campaign, a professional solicitor must file a solicitation notice with the division. The notice must include the following:

- (1) A copy of the contract described in subsection (e).
- (2) The projected dates when soliciting will begin and end.
- (3) The location and telephone number from where solicitation will be conducted.
- (4) The name and residence address of each person responsible for directing and supervising the conduct of the campaign. However, the division shall not divulge the residence address unless ordered to do so by a court of competent jurisdiction, or in furtherance of the prosecution of a violation under this chapter.
- (5) If the solicitation is one described under section 7(a)(2) of this chapter, the solicitation notice must include a copy of the required written authorization.



(g) **Not later than ninety (90) days** after a solicitation campaign, other than a campaign for which a written authorization has been filed under subsection (f)(5), has ended, ~~a professional fundraiser consultant or~~ a professional solicitor shall submit the following information concerning the campaign to the division:

- (1) The total **gross** amount of money ~~collected~~ **raised** by the professional solicitor **and the charitable organization from donors.**
- (2) The total amount of money paid to ~~or retained by~~ the professional solicitor.
- (3) The total amount of money, **not including the amount identified under subsection (g)(2), that paid by** the charitable organization ~~paid~~ as expenses as part of the solicitation campaign.
- (4) The total amount of money ~~received~~ **paid to or retained by** the charitable organization **after the amounts identified under subsection (g)(2) and (g)(3) are deducted.**

The division may deny or revoke the registration of a professional solicitor who fails to comply with this subsection.

(h) The charitable organization on whose behalf the professional solicitor is acting must certify that the information filed under subsections (f) and (g) is true and complete to the best of its knowledge.

(i) **At the beginning of each solicitation call, a professional fundraiser consultant and a professional solicitor must state all of the following:**

- (1) **The name of the company for whom the professional fundraiser consultant or professional solicitor is calling.**
- (2) **The name of the professional fundraiser consultant or professional solicitor.**
- (3) **The phone number and address of the location from which the professional fundraiser consultant or professional solicitor is making the telephone call.**
- (4) **The percentage of the charitable contribution that will be expended for charitable purposes after administrative costs and the costs of making the solicitation have been satisfied.**

SECTION 9. IC 23-7-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) The division may receive, investigate, and prosecute complaints concerning the activities of professional fundraiser consultants and professional solicitors who:

- (1) may be subject to this chapter; or
- (2) have or may have violated this chapter.

All complaints must be in writing, signed by the complainant, and filed

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with the division.

(b) The attorney general may subpoena witnesses, send for and compel the production of books, records, papers, and documents of professional fundraiser consultants and professional solicitors who are subject to registration under this chapter, for the furtherance of any investigation under this chapter. The circuit or superior court located in the county where the subpoena is to be issued shall enforce any such subpoena by the attorney general.

(c) The attorney general may bring an action to enjoin a violation of this chapter. In this action, the court may order a person who has violated this chapter to pay the reasonable costs of investigation and prosecution incurred by the attorney general, may award the state civil penalties up to five hundred dollars (\$500) for each violation, and may order the professional fundraiser consultant or professional solicitor to repay money unlawfully received from aggrieved solicitees. In ordering injunctive relief, the division is not required to establish irreparable harm but only a violation of a statute or that the requested order promotes the public interest. It is an affirmative defense to the assessment of civil penalties under this subsection that the defendant acted pursuant to a good faith misunderstanding concerning the requirements of this chapter.

(d) A person who knowingly or intentionally:

- (1) fails to file a registration statement or other information;
- (2) files a statement or other information which is materially false;
- or
- (3) fails to make a disclosure;

as required by this chapter, commits a Class B misdemeanor. However, the offense is a Class A misdemeanor if the person has a previous unrelated conviction under this subsection.

(e) A local unit of government may adopt an ordinance which regulates professional fundraisers and solicitors if the ordinance does not conflict with this chapter.

(f) A professional fundraiser consultant, or a professional solicitor, who has the person's principal place of business outside of Indiana, or who has organized under the laws of another state, and who solicits contributions from persons in Indiana, is subject to this chapter and shall be considered to have appointed the secretary of state as his agent. All service of process under this subsection shall be made on the secretary of state under Rule 4.10 of the Indiana Rules of Trial Procedure.

(g) Under rules adopted by the attorney general, the attorney general may impose fines on professional fundraiser consultants

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**and professional solicitors for the late filing of information
required to be filed under this chapter.**

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